

Panaji, 15th July, 2004 (Ashada 24, 1926)

SERIES II No. 16

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Notification

No. 28/1/2003-LAB/1243

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 26-3-2003 in reference No. IT/26/2002, is hereby published as required by section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 7th May, 2003.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/26/2002

Workmen rep. by the

President;

Goa Trade and Commercial

Workers Union,

Velho Bldg., 2nd Floor,

Panaji-Goa.

V/s

M/s. Intergold (India)

P Ltd., Plot No. 52,

Pilerne Industrial

Estate, Pilerne-Goa.

— Workmen/Party I

— Employer/Party II

Workmen/Party-I represented by Adv. Shri Suhas Naik.

Employer/Party II represented by Adv. Shri M. S. Bandodkar.

Dated: 26-3-2003.

AWARD

In exercise of the powers conferred by sub-section 2 of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order dated 1-4-2002 bearing No. 28/12/2002-LAB referred the following dispute for adjudication of this Tribunal.

(A) "whether the following demands raised by the Goa Trade and Commercial Workers Union (AITUC) are legal and justified?

(1) Pay-Scale

That the following Pay-scale be implemented effective from 1-11-2000.

Grade	Category	Designation	Pay-Scale
A	Highly skilled	Insurers	2500-250-3750-375-5625 5 5
B	Skilled	Craft - persons	2000-200-3000-300-4500 5 5
C	Semi-skilled	Helpers	1500-150-2250-225-3375 5 5

(2) FLAT-RISE:

That each workperson be paid a Flat-Rise of Rs. 800/- per month over and above the Basic salary as on 0-11-2000. The total of Rs. 800/- plus the Basic salary as on 1-11-2000 be fitted in the respective pay scales as demanded in (1) above as per the normal standards set for 'fitment'.

(3) FIXED DEARNESS ALLOWANCE (FDA):

That with effect from 1-11-2000, each workperson be paid a Fixed Dearness Allowance (FDA) every month at the rate given below at AAICPI 1500 (1960=100):

- (A) Rs. 900/-
- (B) Rs. 700/-
- (C) Rs. 600/-

(4) VARIABLE DEARNESS ALLOWANCE (VDA):

That, with effect from 1-11-2000, each workperson be paid a Variable Dearness Allowance (VDA) at the rate of Rs. 2/- on the AAICPI base 1500 points (1960=100).

The Variable Dearness Allowance be revised every quarter.

(5) HOUSE RENT ALLOWANCE (HRA):

That, with effect from 1-11-2000, each worker ought to be paid a House Rent Allowance at the rate given below:

- (A) Grade - A = Rs. 750/-
- (B) Grade - B = Rs. 600/-
- (C) Grade - C = Rs. 450/-

(6) LEAVE TRAVEL ALLOWANCE:

That, with effect from 1-11-2000, each worker be paid Rs. 2500/- per annum towards Leave Travel Allowance (LTA).

(7) CONVEYANCE ALLOWANCE:

That with effect from 1-11-2001, each worker ought to be paid a conveyance allowance at the rate as given below:

- (A) Grade - A = Rs. 900/-
- (B) Grade - B = Rs. 800/-
- (C) Grade - C = Rs. 700/-

(8) LEAVE FACILITIES:

That the workers be eligible to the following Leave-facilities.

- (a) Privilege Leave : 30 days per annum with facility to accumulate upto 100 days.
- (b) Casual Leave : 10 days per annum with facility to encash.
- (c) Sick Leave : 10 days per annum with a facility to accumulate upto 30 days.

(9) FREE TRANSPORT ON ALL THE DAYS OF THE WEEK:

Free transport to - & - fro to all the workers on all the days of the week from;

Mapusa - via - Parra, Saligao, to Pilerne.

Panaji - via - Malim, Betim, Verem, Maina to Pilerne.

(B) If not, to what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/26/2002 and registered A. D. notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workmen/Party-I (for short 'Union') filed its statement of claim at Exb.-4. The facts of the case in brief as pleaded by the union are that the Employer/Party-II (for short 'employer') is engaged in the business of manufacturing gold and diamond ornaments and caters to the needs of Indian as well as foreign clients and it has many show rooms wherein the products manufactured by the employer in its factory are displayed and sold. That the workers employed by the employer are being paid very low salary since the inception of the factory. That the employer makes huge profits every year though the employer shows losses artificially manipulating the statement of Accounts and entries therein and has accumulated lot of unaccounted profits. That the workers have not been properly designated nor proper pay scales have been made available to them and the existing salary which is being paid to them is not sufficient to bear the expenses of house rent and other expenses. That the wages and other service conditions of the workers within the region in other factories are very high and better. The union stated that the cost of living in the market is increasing day by day and it is becoming extremely difficult for the workmen to sustain on the salary paid by the employer. The union stated that the demands raised by the said union on behalf of the workers against the employer are just, fair and proper and the employer has the capacity to meet the said demands. The union therefore prayed that the demands raised on behalf of the workers be granted.

3. The employer filed written statement at Exb.-5. The employer stated that they received a letter dated 22-10-97 from the union claiming that the workers of the employer have joined the said union and subsequently the said union submitted a charter of demands on 12-11-97 seeking revision of pay scales, FDA, HRA, Travelling Allowance etc. The employer stated that on receipt of the said demands discussions were held and though financially it was not viable a settlement was signed with the said union revising substantially the service conditions and emoluments of the workers. The employer stated that thereafter the union signed another Charter of Demand dated 3-11-2000 seeking to revise the service conditions of the workers. The employer stated that their financial position is very bad and they have carry forward losses and inspite of that they sent another settlement on 22-10-2001 giving interim relief to the workers. The employer stated that their financial position is not good and having regards to industry cum resign principle, comparable concern and capacity to pay, what is received by the workers is reasonable and no rational case exists for increase in any wages or other emoluments of the workers and the reference is liable to be rejected. The union thereafter filed rejoinder at Exb.-6.

4. On the pleadings of the parties issues were framed at Exb.-7. Thereafter the parties submitted that they are

trying to arrive at an amicable settlement and at the request of both the parties the case was fixed on 11-12-2002 for filing terms of settlement by the parties. Accordingly on the said date Adv. Shri Suhas Naik appeared on behalf of the Union and Adv. Shri S. K. Manjrekar holding for Adv. Shri Bandodkar appeared on behalf of the employer. They submitted that the dispute between the parties was amicably settle and they filed the terms of settlement dated 29-11-2002 along with the application dated 11-12-2002 at Exb.-8 and prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the award in terms of the settlement dated 29-11-2002.

ORDER

1. GRADE AND SCALES:

It is agreed between the parties that the existing grades and pay scales shall continue.

2. It is agreed between the parties that the terms of the settlement shall be applicable for all permanent workpersons w.e.f. 1-9-2002 to 31-5-2005 as per Annexure "A".

3. It is agreed between the parties that the increase in salary & allowance paid in this settlement shall be addition to what has been paid to the workperson as per the "Interim Relief" settlement dated 22-10-2001.

4. SALARY INCREASE:

It is agreed between the parties that the rise in the emoluments paid to the workperson as per clause "2" above.

5. PAID HOLIDAYS:

It is agreed between the parties that the workperson shall get 2 additional Paid Holidays during the festival of Ganesh Chaturthi.

6. ARREARS:

It is agreed between the parties that the arrears arising out of this settlement shall be paid on or before 7-12-2002.

7. SPECIAL INCREMENT:

It is agreed between the parties that all workpersons shall be entitled for one special increment in the respective pay scale in third year of the settlement i.e. on 1-7-2004.

8. GOOD WILL AMOUNT:

It is agreed between the parties that each workperson shall be paid Rs. 1000/- as a one time good will amount.

9. GOLD SETTING AND MODEL MAKING:

It is agreed between the parties that the workperson

in Gold Setting department shall be paid three additional increment and those in & Model Making Department shall be paid four additional increments as per Annexure "B" to the settlement.

10. GENERAL:

It is agreed between the parties that this settlement is in full and complete settlement of all the demands forwarded by the union in the charter of demands dated 3-11-2000 or otherwise and it is further agreed between the parties that those demands which are not specifically settled by this settlement are dropped by the Union/workperson.

11. EXISTING SERVICE CONDITION:

It is agreed between the parties that all the terms and conditions of service, service conditions facilities enjoined upon the workmen and as agreed in earlier settlement which are otherwise not specifically changed by this settlement and which are part and parcel of earlier settlement and practise shall continue in future.

12. LOANS/ADVANCES:

It is agreed between both the parties that all the workpersons will be eligible to a maximum of four months gross salary as an advance (Interest-free) to be deducted in 16 monthly instalments. However the loan shall be disbursed to the workpersons depending upon the availability of fund and it will be at entire discretion of the Management to how many workpersons will qualify at one time for the loan depending upon merits of case and seniority of the workperson.

13. UNION-DEDUCTION:

It is agreed between the parties that the Management shall deduct a sum of Rs. 900/- from the amount of arrears payable to each worker and shall pay by cheque to the Goa Trade and Commercial Workers Union as workers contribution to the Union.

14. APPLICABILITY:

It is agreed between the parties that this settlement shall be applicable to permanent workperson and shall be effective from 1-9-2002 and binding for the period of 3 years i.e. upto 3-5-2005 and shall continue to remain in force thereafter until it is terminated in accordance with the law and new settlement is arrived at between the parties.

15. It is agreed between the parties that the Union and Management shall submit a joint application before the Industrial Tribunal, Panjim Goa in Ref. No. IT/26/02 to secure a consent Award and for disposing off the said reference in the terms of this amicable settlement.

16. Both the parties agree to submit compliance report in respect of implementation of the terms of this settlement to Asst. Labour Commissioner, Mapusa Goa on or before 15th Dec. 2002.

Annexure "A"

w.e.f. 01/09/02 to 01/06/03 First Year

Sr. No.	Name	Gr.	Basic	F.D.A.	H.R.A.	C.A.	GROSS
1	Umesh Shirodkar	A	2350	1025	557	683	4615
2	Sanjay Sawant	A	2350	1025	557	683	4615
3	Krishna Bimbalkar	A	2350	1025	557	683	4615
4	Pundalik Kinalkar	A	2350	1025	557	683	4615
5	Bharati Kamat	A	2350	1025	557	683	4615
6	Sangeeta Vernekar	A	2350	1025	557	683	4615
7	Chandrakant Khandeparkar	A	2350	1025	557	683	4615
8	Nitin Velingkar	B	2020	874	470	621	3985
9	Ajit Amonkar	B	2020	874	470	621	3985
10	Sushant Naik	B	2020	874	470	621	3985
11	Sunil Chodankar	B	2020	874	470	621	3985
12	Balaraj Chari	B	2020	874	470	621	3985
13	Seema Malik	B	2020	874	470	621	3985
14	Suvarna Naik	B	2020	874	470	621	3985
15	Archana Kalangutkar	B	2020	874	470	621	3985
16	Kalidas Patekar	B	2020	874	470	621	3985
17	Geeta Banwlikar	B	2020	874	470	621	3985
18	Sharmishtha Malik	B	2020	874	470	621	3985
19	Digambar Naik	B	2020	874	470	621	3985
20	Suvarna V. Naik	B	2020	874	470	621	3985
21	Yogita Nagvekar	# #	B 2500	874	470	621	4465
22	Rupesh Gavas	# #	B 2500	874	470	621	4465
23	Bhikaji Walavalkar	# #	B 2500	874	470	621	4465
24	Dilesh Aswekar	# #	B 2500	874	470	621	4465
25	Gopal Naik	#	B 2380	874	470	621	4345
26	Rupesh Nevrekar	#	B 2380	874	470	621	4345
27	Prasad Banauliker	#	B 2380	874	470	621	4345
28	Audumbar Malik	#	B 2380	874	470	621	4345
29	Pradeep Shirodkar	#	B 2380	874	470	621	4345
30	Hazel Lobo	#	B 2380	874	470	621	4345
31	Reshma Naik	#	B 2380	874	470	621	4345
32	Sunil Rane	#	B 2380	874	470	621	4345
33	Geeta Malik	#	B 2380	874	470	621	4345
34	Mangesh G	#	B 2260	874	470	621	4225
35	Mohandas G	#	B 2140	874	470	621	4105
36	Vishranti Gawas	B	2020	874	470	621	3985
37	Saloja Govekar	B	2020	874	470	621	3985
38	Nalita Khandeparkar	B	2020	874	470	621	3985
39	Ravindra Kalangutkar	B	2020	874	470	621	3985
40	Mahadev Kalangutkar	B	2020	874	470	621	3985
41	Sanjog Chari	B	2020	874	470	621	3985
42	Sushma Parsekar	B	2020	874	470	621	3985

Sr. No.	Name	Gr.	Basic	F.D.A.	H.R.A.	C.A.	GROSS
43	Saraswati Dabholkar	B	2020	874	470	621	3985
44	Seema Naik	B	2020	874	470	621	3985
45	Shobha Kamat	B	2020	874	470	621	3985
46	Pandari Gawade	B	2020	874	470	621	3985
47	Irene Braganza	B	2020	874	470	621	3985
48	Sulaksha Gaad	B	2020	874	470	621	3985
49	Pragati Vernekar	B	2020	874	470	621	3985
50	Chandralekha Salgaonkar	B	2020	874	470	621	3985
51	Maria Fernandes	B	2020	874	470	621	3985
52	Yashawant Nagvenkar	B	2020	874	470	621	3985
53	Arjun Karmalkar	B	2020	874	470	621	3985
54	Prabhakar Bandodkar	B	2020	874	470	621	3985
55	Satyanarayan Prajapati	B	2020	874	470	621	3985
56	Namdeo Shetagaokar	B	2020	874	470	621	3985
57	Laxman Salgaonkar	B	2020	874	470	621	3985
58	Dattaram Vengurlekar	B	2020	874	470	621	3985
59	Severinho Fernandes	B	2020	874	470	621	3985
60	Nandita Satardekar	B	2020	874	470	621	3985
61	Sangeeta Naik	B	2020	874	470	621	3985
62	Surekha Parulekar	B	2020	874	470	621	3985
63	Neelam Mashelkar	B	2020	874	470	621	3985
64	Manisha Naik	B	2020	874	470	621	3985
65	Reshma Pednekar	B	2020	874	470	621	3985
66	Laxmikant Shirodkar	B	2020	874	470	621	3985
67	Nutan Govekar	B	2020	874	470	621	3985
68	Pushpalata Morajkar	B	2020	874	470	621	3985
69	Gajanan Dabholkar	B	2020	874	470	621	3985
70	Rajashree Bandodkar	B	2020	874	470	621	3985
71	Rajani Golatkar	B	2020	874	470	621	3985
72	Prashanti Pomburfekar	B	2020	874	470	621	3985
73	Neeta Nanodkar	B	2020	874	470	621	3985
74	Yogita Vernekar	B	2020	874	470	621	3985
75	Zubeda Shaikh	B	2020	874	470	621	3985
76	Tanuja Surilakar	B	2020	874	470	621	3985
77	Vishranti Amerkar	B	2020	874	470	621	3985
78	Rajesh Lotlikar	B	2020	874	470	621	3985
79	Babita Vengurlekar	B	2020	874	470	621	3985
80	Deepa Salgaonkar	B	2020	874	470	621	3985
81	Tejashvi Malik	B	2020	874	470	621	3985
82	Anusaya Karmalkar	C	1730	770	385	560	3445
83	Parvati Khandeparkar	C	1730	770	385	560	3445
84	Geeta Kotkar	C	1730	770	385	560	3445

Annexure "A"						
w.e.f. 01/06/03 to 01/06/04 Second Year						
Sr. No.	Name	Gr.	Basic	F.D.A.	H.R.A.	C.A. GROSS
1	Umesh Shirodkar	A	2500	1165	587	713 4965
2	Sanjay Sawant	A	2500	1165	587	713 4965
3	Krishna Bimbalkar	A	2500	1165	587	713 4965
4	Pundalik Kinalkar	A	2500	1165	587	713 4965
5	Bharati Kamat	A	2500	1165	587	713 4965
6	Sangeeta Vernekar	A	2500	1165	587	713 4965
7	Chandrakant Khandeparkar	A	2500	1165	587	713 4965
8	Nitin Velingkar	B	2140	1014	500	651 4305
9	Ajit Amonkar	B	2140	1014	500	651 4305
10	Sushant Naik	B	2140	1014	500	651 4305
11	Sunil Chodankar	B	2140	1014	500	651 4305
12	Balaraj Chari	B	2140	1014	500	651 4305
13	Seema Malik	B	2140	1014	500	651 4305
14	Suvarna Naik	B	2140	1014	500	651 4305
15	Archana Kalangutkar	B	2140	1014	500	651 4305
16	Kalidas Patekar	B	2140	1014	500	651 4305
17	Geeta Banwlikar	B	2140	1014	500	651 4305
18	Sharmishtha Malik	B	2140	1014	500	651 4305
19	Digambar Naik	B	2140	1014	500	651 4305
20	Suvarna V. Naik	B	2140	1014	500	651 4305
21	Yogita Nagvekar	# #	B 2620	1014	500	651 4785
22	Rupesh Gavas	# #	B 2620	1014	500	651 4785
23	Bhikaji Walavalkar	# #	B 2620	1014	500	651 4785
24	Dinesh Aswekar	# #	B 2620	1014	500	651 4785
25	Gopal Naik	#	B 2500	1014	500	651 4665
26	Rupesh Nevrekar	#	B 2500	1014	500	651 4665
27	Prasad Banaulikar	#	B 2500	1014	500	651 4665
28	Audumbar Malik	#	B 2500	1014	500	651 4665
29	Pradeep Shirodkar	#	B 2500	1014	500	651 4665
30	Hazel Lobo	#	B 2500	1014	500	651 4665
31	Reshma Naik	#	B 2500	1014	500	651 4665
32	Sunil Rane	#	B 2500	1014	500	651 4665
33	Geeta Malik	#	B 2500	1014	500	651 4665
34	Mangesh G	#	B 2380	1014	500	651 4545
35	Mohandas G	#	B 2260	1014	500	651 4425
36	Vishranti Gawas	B	2140	1014	500	651 4305
37	Saloja Govekar	B	2140	1014	500	651 4305
38	Nalita Khandeparkar	B	2140	1014	500	651 4305
39	Ravindra Kalangutkar	B	2140	1014	500	651 4305
40	Mahadev Kalangutkar	B	2140	1014	500	651 4305
41	Sanjog Chari	B	2140	1014	500	651 4305

Sr. No.	Name	Gr.	Basic	F.D.A.	H.R.A.	C.A.	GROSS
42	Sushma Parsekar	B	2140	1014	500	651	4305
43	Saraswati Dabholkar	B	2140	1014	500	651	4305
44	Seema Naik	B	2140	1014	500	651	4305
45	Shobha Kamat	B	2140	1014	500	651	4305
46	Pandari Gawade	B	2140	1014	500	651	4305
47	Irene Braganza	B	2140	1014	500	651	4305
48	Sulaksha Gaad	B	2140	1014	500	651	4305
49	Pragati Vernekar	B	2140	1014	500	651	4305
50	Chandralekha Salgaonkar	B	2140	1014	500	651	4305
51	Maria Fernandes	B	2140	1014	500	651	4305
52	Yashawant Nagvenkar	B	2140	1014	500	651	4305
53	Arjun Karmalkar	B	2140	1014	500	651	4305
54	Prabhakar Bhandodkar	B	2140	1014	500	651	4305
55	Satyanarayan Prajapati	B	2140	1014	500	651	4305
56	Namdeo Shetagaokar	B	2140	1014	500	651	4305
57	Laxman Salgaonkar	B	2140	1014	500	651	4305
58	Dattaram Vengurlekar	B	2140	1014	500	651	4305
59	Severinho Fernandes	B	2140	1014	500	651	4305
60	Nandita Satardekar	B	2140	1014	500	651	4305
61	Sangeeta Naik	B	2140	1014	500	651	4305
62	Surekha Parulekar	B	2140	1014	500	651	4305
63	Neelam Mashelkar	B	2140	1014	500	651	4305
64	Manisha Naik	B	2140	1014	500	651	4305
65	Reshma Pednekar	B	2140	1014	500	651	4305
66	Laxmikant Shirodkar	B	2140	1014	500	651	4305
67	Nutan Govekar	B	2140	1014	500	651	4305
68	Pushpalata Morajkar	B	2140	1014	500	651	4305
69	Gajanan Dabholkar	B	2140	1014	500	651	4305
70	Rajashree Bhandodkar	B	2140	1014	500	651	4305
71	Rajani Golatkar	B	2140	1014	500	651	4305
72	Prashanti Pomburfekar	B	2140	1014	500	651	4305
73	Neeta Nanodkar	B	2140	1014	500	651	4305
74	Yogita Vernekar	B	2140	1014	500	651	4305
75	Zubeda Shaikh	B	2140	1014	500	651	4305
76	Tanuja Surilakar	B	2140	1014	500	651	4305
77	Vishranti Amerkar	B	2140	1014	500	651	4305
78	Rajesh Lotlikar	B	2140	1014	500	651	4305
79	Babita Vengurlekar	B	2140	1014	500	651	4305
80	Deepa Salgaonkar	B	2140	1014	500	651	4305
81	Tejashvi Malik	B	2140	1014	500	651	4305
82	Anusaya Karmalkar	C	1820	910	415	590	3735
83	Parvati Khandeparkar	C	1820	910	415	590	3735
84	Geeta Kotkar	C	1820	910	415	590	3735

Annexure "A"

w.e.f. 01/06/04 to 01/06/05 Third Year

Sr. No.	Name	Gr.	Basic	F.D.A.	H.R.A.	C.A.	GROSS
1	Umesh Shirodkar	A	2800	1305	617	743	5465
2	Sanjay Sawant	A	2800	1305	617	743	5465
3	Krishna Bimbalkar	A	2800	1305	617	743	5465
4	Pundalik Kinalkar	A	2800	1305	617	743	5465
5	Bharati Kamat	A	2800	1305	617	743	5465
6	Sangeeta Vernekar	A	2800	1305	617	743	5465
7	Chandrakant Khandeparkar	A	2800	1305	617	743	5465
8	Nitin Velingkar	B	2380	1154	530	681	4745
9	Ajit Amonkar	B	2380	1154	530	681	4745
10	Sushant Naik	B	2380	1154	530	681	4745
11	Sunil Chodankar	B	2380	1154	530	681	4745
12	Balaraj Chari	B	2380	1154	530	681	4745
13	Seema Malik	B	2380	1154	530	681	4745
14	Suvarna Naik	B	2380	1154	530	681	4745
15	Archana Kalangutkar	B	2380	1154	530	681	4745
16	Kalidas Patekar	B	2380	1154	530	681	4745
17	Geeta Banwlikar	B	2380	1154	530	681	4745
18	Sharmishtha Malik	B	2380	1154	530	681	4745
19	Digambar Naik	B	2380	1154	530	681	4745
20	Suvarna V. Naik	B	2380	1154	530	681	4745
21	Yogita Nagvekar	# #	B 2860	1154	530	681	5225
22	Rupesh Gavvas	# #	B 2860	1154	530	681	5225
23	Bhikaji Walavalkar	# #	B 2860	1154	530	681	5225
24	Dinesh Aswekar	# #	B 2860	1154	530	681	5225
25	Gopal Naik	#	B 2740	1154	530	681	5105
26	Rupesh Nevrekar	#	B 2740	1154	530	681	5105
27	Prasad Banaulikar	#	B 2740	1154	530	681	5105
28	Audumbar Malik	#	B 2740	1154	530	681	5105
29	Pradeep Shirodkar	#	B 2740	1154	530	681	5105
30	Hazel Lobo	#	B 2740	1154	530	681	5105
31	Reshma Naik	#	B 2740	1154	530	681	5105
32	Sunil Rane	#	B 2740	1154	530	681	5105
33	Geeta Malik	#	B 2740	1154	530	681	5105
34	Mangesh G	#	B 2620	1154	530	681	4985
35	Mohandas G	#	B 2500	1154	530	681	4865
36	Vishranti Gawas	B	2380	1154	530	681	4745
37	Saloja Govekar	B	2380	1154	530	681	4745
38	Nalita Khandeparkar	B	2380	1154	530	681	4745
39	Ravindra Kalangutkar	B	2380	1154	530	681	4745
40	Mahadev Kalangutkar	B	2380	1154	530	681	4745
41	Sanjog Chari	B	2380	1154	530	681	4745

Sr. No.	Name	Gr.	Basic	F.D.A.	H.R.A.	C.A.	GROSS
42	Sushma Parsekar	B	2380	1154	530	681	4745
43	Saraswati Dabholkar	B	2380	1154	530	681	4745
44	Seema Naik	B	2380	1154	530	681	4745
45	Shobha Kamat	B	2380	1154	530	681	4745
46	Pandari Gawade	B	2380	1154	530	681	4745
47	Irene Braganza	B	2380	1154	530	681	4745
48	Sulaksha Gaad	B	2380	1154	530	681	4745
49	Pragati Vernekar	B	2380	1154	530	681	4745
50	Chandralekha Salgaonkar	B	2380	1154	530	681	4745
51	Maria Fernandes	B	2380	1154	530	681	4745
52	Yashawant Nagvenkar	B	2380	1154	530	681	4745
53	Arjun Karmalkar	B	2380	1154	530	681	4745
54	Prabhakar Bandodkar	B	2380	1154	530	681	4745
55	Satyanarayan Prajapati	B	2380	1154	530	681	4745
56	Namdeo Shetagaokar	B	2380	1154	530	681	4745
57	Laxman Salgaonkar	B	2380	1154	530	681	4745
58	Dattaram Vengurlekar	B	2380	1154	530	681	4745
59	Severinho Fernandes	B	2380	1154	530	681	4745
60	Nandita Satardekar	B	2380	1154	530	681	4745
61	Sangeeta Naik	B	2380	1154	530	681	4745
62	Surekha Parulekar	B	2380	1154	530	681	4745
63	Neelam Mashelkar	B	2380	1154	530	681	4745
64	Manisha Naik	B	2380	1154	530	681	4745
65	Reshma Pednekar	B	2380	1154	530	681	4745
66	Laxmikant Shirodkar	B	2380	1154	530	681	4745
67	Nutan Govekar	B	2380	1154	530	681	4745
68	Pushpalata Morajkar	B	2380	1154	530	681	4745
69	Gajanan Dabholkar	B	2380	1154	530	681	4745
70	Rajashree Bandodkar	B	2380	1154	530	681	4745
71	Rajani Golatkar	B	2380	1154	530	681	4745
72	Prashanti Pomburfekar	B	2380	1154	530	681	4745
73	Neeta Nanodkar	B	2380	1154	530	681	4745
74	Yogita Vernekar	B	2380	1154	530	681	4745
75	Zubeda Shaikh	B	2380	1154	530	681	4745
76	Tanuja Surilakar	B	2380	1154	530	681	4745
77	Vishranti Amerkar	B	2380	1154	530	681	4745
78	Rajesh Lotlikar	B	2380	1154	530	681	4745
79	Babita Vengurlekar	B	2380	1154	530	681	4745
80	Deepa Salgaonkar	B	2380	1154	530	681	4745
81	Tejashvi Malik	B	2380	1154	530	681	4745
82	Anusaya Karmalkar	C	2000	1050	445	620	4115
83	Parvati Khandeparkar	C	2000	1050	445	620	4115
84	Geeta Kotkar	C	2000	1050	445	620	4115

Annexure "B"
Gold Setting Department
Increase by Three Increment

Sr. No.	Employees Name	Basic	F.D.A.	H.R.A.	C.A.	GROSS
1	Gopal Naik	2380	874	470	621	4345
2	Rupesh N	2380	874	470	621	4345
3	Prasad B	2380	874	470	621	4345
4	Audumber M	2380	874	470	621	4345
5	Pradeep S	2380	874	470	621	4345
6	Sunil Rane	2380	874	470	621	4345
7	Reshma N	2380	874	470	621	4345
8	Hazel Lobo	2380	874	470	621	4345
9	Geeta Malik	2380	874	470	621	4345
10	Mangesh G	2260	874	470	621	4225
11	Mohandas	2060	874	470	621	4025
12	Vinay Naik	2060	874	470	621	4025

MASTER MODEL DEPT

Increase by Four Increment

Sr. No.	Employees Name	Basic	F.D.A.	H.R.A.	C.A.	GROSS
1	Rupesh G	2500	874	470	621	4465
2	Bhikaji W	2500	874	470	621	4465
3	Dilesh A	2500	874	470	621	4465
4	Yogeta N	2500	874	470	621	4465

No order as to cost. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 10-7-2003 in reference No. IT/85/98, is hereby published as required by section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 13th August, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

IT/85/98

Shri Pralhad Y. Nipaneekar,
Madel, Chodan
Goa.

— Workman/Party I

V/s

The Liquidator of the
Mandovi Co-op. Stores Limited,
Jr. Auditor, Co-op. Societies,
Central Zone,
Panaji-Goa.

— Employer/Party II

Workman/Party-I represented by Adv. Shri A. Nigalye.

Employer/Party II represented by Adv. Shri M. S. Khandeparkar.

Panaji, dated: 10-7-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 7th September, 1998 bearing No. IRM/CON/(37)/97/10631 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the Liquidator of the Mandovi Co-operative Stores Limited, Panaji-Goa, in terminating the services of Shri Pralhad Y. Nipaneekar, Weighman, with effect from 1-2-97 is legal and justified?"

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/85/98 and registered A/D notice was issued to the parties. In pursuance to the said notice parties put in their appearance. The Workman/Party I (for short, "Workman") filed his statement of claim at Exb.3. The facts of the case in brief as pleaded by the workman are that he was employed as a weighman with the Employer/Party II (for short, "Employer") i.e., Mandovi Co-operative Stores Limited, w.e.f. 1-4-64 on an initial salary of Rs. 85/- p.m., and his last drawn salary was Rs. 1066/- p.m. That the said Society was dealing in the sale of essential commodities and other consumer goods and it is now under liquidation and the Jr. Auditor of Co-operative Societies, Central Zone, in the office of the Asst. Registrar of Co-operative Societies, Panaji, is appointed as the Liquidator. That by letter dated 14th February, 1997 the Liquidator of the said Society

informed the workman that the Society is taken into liquidation as per the order of the Assistant Registrar of Co-operative Societies, Central Zone, Panaji, dated 18-12-96 and that the fair price shop no. 1 which was run by the said Society is now allotted to Janata Consumers Co-operative Society, Panaji. That in the said letter it was mentioned that the services of the workman are no more required and therefore his services stood terminated w.e.f. 1-2-97. That the workman was offered a sum of Rs. 1066/- by cheque which was enclosed in the said letter and he was informed that the said amount was towards notice period. That by letter dated 4-4-97 the workman demanded reinstatement in service with full back wages and he mentioned in the said letter that the establishment of the employer i.e., the Society is not factually closed and that a substitute has been appointed in its place. That the Liquidator did not reply to the said letter and therefore the workman sought the intervention of the office of the Labour Commissioner. That the Asst. Labour Commissioner, Panaji, being the conciliation officer initiated conciliation proceedings but the same ended in failure. The workman contended that termination of his services by the employer is illegal and unjustified and his services have been terminated without reasonable cause and for no misconduct committed by him. The workman contended that he was not offered or paid retrenchment compensation at the time when his services were terminated or at any time thereafter thereby violating the mandatory provisions of Sec. 25F of the Industrial Disputes Act, 1947. The workman also contended that his services are terminated with retrospective effect which is not permissible. The workman therefore claimed that he is entitled to reinstatement in service with full back wages and continuity in service.

3. The employer filed written statement at Exb.8. By way of preliminary objections the employer stated that the Mandovi Co-operative Stores Ltd., is not an 'Industry' within the meaning of Sec. 2(j) of the Industrial Disputes Act and the workman is not a 'workman' as defined under Sec.2(s) of the Industrial Disputes Act, 1947. The employer also stated that no demand was raised on the management by the workman and as such there is no industrial dispute as contemplated u/s 2(k) of the Industrial Disputes Act, 1947. The employer stated that the workman has not sought leave of the Registrar of Co-operative Societies as required under Sec. 107 of the Maharashtra Co-operative Societies Act, 1960 before initiating the present proceedings. The employer stated that on the above grounds the claim put up by the workman is liable to be dismissed. Without prejudice to the above contentions the employer admitted that the workman was employed with Mandovi Co-operative Stores Ltd., and his last drawn wages were Rs. 1066/- p.m. The employer stated that the Sr. Auditor of the Asst. Registrar of Co-op. Societies, Central Zone has already filed misfeasance case against the workman and other employees including the then Directors of the Society

based on the audit report of the year 1991-92 and 92-93. The employer stated that only the space of the fair price shop is allotted to Janata Co-op. Society which is a separate legal entity for all purposes. The employer denied that by letter dated 4-4-97 addressed to the Liquidator the workman demanded reinstatement in service with full back wages and with continuity of service. The employer denied that termination of service of the workman is illegal and unjustified or that the services are terminated without reasonable cause and for no misconduct committed by him. The employer also denied that the workman was not offered or not paid retrenchment compensation at the time of termination of service or at any time thereafter or that the retrenchment has been affected without following the mandatory provisions of Sec. 25F of the Industrial Disputes Act, 1947. The employer denied that the services of the workman have been terminated with retrospective effect and that it is not permissible. The employer stated that the society is already under winding up process and the question of functioning of the same did not arise at all. The employer denied that the Janata Co-op. Society has become the successor in interest of society. The employer prayed that the claim of the workman be dismissed with costs. Subsequent to the filing of the written statement the employer amended para.9 of the written statement and by way of amendment the employer admitted that a letter dated 4-4-97 was addressed to the Liquidator by the workman but it was denied that the Liquidator failed to answer the said letter. The employer stated that the said letter was replied by letter dated 19-5-97.

4. On the pleadings of the parties following issues were framed at Exb.9.

1. Whether the Party I prove that the termination of his service by the Party II amounts to retrenchment and that Party II did not comply with the provisions of Sec. 25F of the Industrial Disputes Act, 1947 before terminating his services?
2. Whether the Party I proves that the action of the Party II in terminating his services w.e.f., 1-2-97 is illegal and unjustified?
3. Whether the Party II proves that the reference is liable to be rejected as the Party I did not obtain leave of the Registrar of Co-op. Societies prior to raising the dispute?
4. Whether the Party II proves that the Party I is not a "workman" and hence the reference is not maintainable?
5. Whether the Party II proves that there is no industrial dispute within the meaning of Sec.2(k) of the Industrial Disputes Act, 1947 and hence the reference is not maintainable?

6. Whether the Party II proves that Mandovi Co-operative Society is not an "industry" and hence the reference is not maintainable?
7. Whether the Party I is entitled to any relief?
8. What Award?

5. My findings on the issues are as follows:

- Issue No. 1: In the negative.
- Issue No. 2: In the affirmative.
- Issue No. 3: In the negative.
- Issue No. 4: In the negative.
- Issue No. 5: In the negative.
- Issue No. 6: In the negative.
- Issue No. 7: As per para. 14 below.
- Issue No. 8: As per order below.

REASONS

Before deciding the issue no. 1, I propose to decide the issue nos. 3, 4, 5 and 6 first because the said issues are relating to the maintainability of the reference.

6. Issue No. 3: The employer has challenged; the reference on the ground that leave of the Registrar of Co-op. Societies was not obtained before raising the dispute. The contention of the employer is that the reference is therefore not maintainable and hence is liable to be rejected. Adv. Shri Khandeparkar, the learned Advocate for the employer has submitted that the leave of the Registrar of Co-op. Societies Act, 1960 is required to be obtained under Sec. 107 of the said Act 1960, as made applicable to the State of Goa. He has submitted that the workman in his cross examination has admitted that he did not obtain any permission from the Registrar of Co-operative Societies before raising the dispute. I do not agree with these submissions of Adv. Shri Khandeparkar. Sec. 107 of the Maharashtra Co-op. Societies Act, 1960 bars jurisdiction of the Civil Court to deal with the matter connected with the winding up or dissolution of the Society under the Act and when a winding up order is made no civil suit or other legal proceedings lie before the Civil Court without the leave of the Registrar of Co-op. Societies. The Industrial Disputes Act, 1947 is a special Act. The Industrial Tribunal or the Labour Court are not civil Courts. Under Sec. 10 of the Industrial Disputes Act, 1947 it is the Government who makes the reference of the dispute to the Tribunal for adjudication. Hence the question of seeking leave of the Registrar under Sec. 107 of the Maharashtra Co-op. Societies Act, does not arise. Even otherwise the leave is required to be taken when the matter is connected with the winding up or dissolution of the Society. In the present case the dispute is concerned with the termination of the services of the workman and it is not concerning the winding up or the dissolution of the Society. In the circumstances the provisions of Sec. 107 of the Maharashtra Co-op. Societies Act, 1960 are not attracted. I therefore hold that the

employer has failed to prove that the reference is liable to be rejected for not obtaining the leave of the Registrar of Co-op. Societies prior to raising the dispute. I therefore answer the issue no. 3 in the negative.

7. Issue Nos. 4 and 6: In the written statement the employer took the defence that the workman Shri Pralhad Nipanekar is not a "workman" as defined under Sec.2(s) of the Industrial Disputes Act, 1947 and the employer is not an industry as defined under Sec. 2(J) of the said Act and therefore the reference is not maintainable. The workman has stated in his evidence that he was working with the employer Mandovi Co-operative Stores Ltd., as a weighman since the year 1964. The burden was on the employer to prove that the workman Shri Pralhad Nipanekar did not fall within the definition of "workman" as defined under the Industrial Disputes Act, 1947. No evidence has been brought on record by the employer either in the cross examination of the workman Shri Nipanekar or in its evidence to show that the said Shri Nipanekar was not covered under the definition of "workman". Similarly the burden was also on the employer to prove that it is not an "industry" as defined under Section 2(J) of the Industrial Disputes Act, 1947. No evidence whatsoever has been brought on record by the employer either in the evidence of Shri Nipanekar or in its evidence to show that it is not an 'industry' as defined under the Act. The employer has totally failed to discharge the burden cast on it in respect of the above issues. Adv. Shri Khandeparkar, the learned Advocate for the employer submitted in the course of his arguments that he is not pressing for the above two issues. In the circumstances I hold that the employer has failed to prove that the workman Shri Pralhad Nipanekar is not a "workman" as defined under Sec.2(s) of the Industrial Disputes Act, 1947 and that it is not an "industry" as defined under Sec.2(J) of the said act. I, therefore answer the issue nos. 4 and 6 in the negative.

8. Issue No. 5: It is the contention of the employer that there is no industrial dispute as contemplated under Sec.2(k) of the Industrial Disputes Act, 1947 because no demand was made on the management by the workman prior to approaching the conciliation machinery. Adv. Shri Khandeparkar, the learned Advocate for the employer, has relied upon the judgment of the Supreme Court in the case of Sindhu Resettlement Corporation Ltd., v/s Industrial Tribunal of Gujrat ad others, repored in AIR 1968 SC 529 and that of the Delhi High Court in the case of Fedders Lloyd Corporation (Pvt.) Ltd., reported in AIR 1970 Delhi 60 in support of his contention. It is no doubt true that what the Government can refer to the Industrial Tribunal is an industrial dispute and no other dispute. Sec 2(K) of the Industrial Disputes Act, 1947 defines industrial dispute as a dispute or difference between employers and employers or between employers and workmen or between workmen and workmen which is connected with the employment nor non-employment or the terms of employment or with conditions of labour,

of any person. Dispute or difference arises when there is demand from one person and rejection of the same from the other. The judgments above, referred to and relied upon by the employer lay down the proposition that unless the workman makes a demand on the management or the employer and the same demand is rejected, the industrial dispute does not arise. In the present case it is the contention of the employer that no demand was made by the workman before approaching the conciliation officer. There is no substance in this contention of the employer. The Mandovi Co-operative Stores Ltd., was taken into liquidation by order of the Asst. Registrar of Coop. Societies, Central Zone, Panaji, by order dated 22nd January, 1997 Exb.E.1. By the same order Shri S. S. Sukhtankar, Jr. Auditor, Co-op. Societies, Central Zone, Panaji was appointed as Liquidator of the Mandovi Co-operative Stores Ltd. The above fact was informed to the workman by the Liquidator vide letter dated 14th February, 1997 Exb. W-2. By this letter the workman was informed that his services are no more required and hence his services stand terminated with effect from 1-2-97. It is on receipt of this letter from the Liquidator that the workman raised the dispute before the Liquidator vide letter dated 4-4-97 Exb. W-3 regarding termination of his service and demanded that he should be reinstated in service with full back wages. The Liquidator replied to the said letter of the workman by reply dated 19-5-97 Exb. W-5. In this letter the workman was informed that his services were terminated in pursuance to the closure of the operation of Mandovi Co-operative Stores Ltd., and he was further informed that his legitimate dues will be settled after the finalisation of the accounts and audit of the said society. This means that the employer had rejected the demand of the workman to reinstate him in service with full back wages. Therefore before raising the dispute before the conciliation officer, the workman had made the demand before the employer for reinstating him in service with full back wages and this demand was rejected by the employer. Therefore the dispute referred by the Government for adjudication is an industrial dispute within the meaning of Sec. 2(K) of the Industrial Disputes Act, 1947. I therefore hold that the employer has failed to prove that there is no industrial dispute within the meaning of Sec. 2(k) of the Industrial Disputes Act, 1947. I, therefore answer the issue no. 5 in the negative.

9. Issue No. 1: The workman has contended that termination of his service by the employer amounts to "retrenchment" and that the employer did not comply with the provisions of Sec. 25F of the Industrial Disputes Act, 1947. Adv. Shri Nigalye, the learned Advocate for the workman, submitted that what was offered to the workman at the time of termination of his service was the notice pay. He submitted that the workman in para. 4 of his claim statement has stated that he was offered a sum of Rs. 1,066/- by cheque which was enclosed in the letter of termination and that he was informed that

the said amount was towards notice period that is, in lieu of notice. He submitted that above contentions of the workman are admitted by the employer in para. 8 of the written statement. He submitted that the workman has stated in para.7 of his claim statement that the retrenchment compensation was not paid to him and the employer in para.11 of the written statement denied that retrenchment compensation was not paid. He submitted that however in the evidence of the employer it is admitted that the retrenchment compensation was not paid.

10. Firstly it is to be seen whether the termination of service of the workman amounts to retrenchment as contended on behalf of the workman. Sec. 2(oo) of the Industrial Disputes Act, 1947 defines retrenchment as follows:

(oo) "Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include;

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued "ill-health"

11. In the present case the services of the workman were terminated vide letter dated 14th February, 1997 Exb. W-2. In the said letter it is stated that the services of the workman are no more required because Liquidator of the Mandovi Co-operative Stores Ltd., has been appointed and the premises where the fair price shop was run by the said Society, has been allotted to Janata Consumers Co-op. Society Ltd., Panaji and hence his services stand terminated from 1-2-97. The letter dated 19-5-97 Exb. W-5 of the Liquidator also mentions that the services of the workman were terminated in pursuance to the closure of the operation of the said Society. The workman has not disputed that the Society is under liquidation. The above evidence therefore shows that the services of the workman were terminated on account of the closure of the business of the employer Society and the said society having gone under

liquidation. Therefore when the business itself is closed and the society is under liquidation, the provisions of Sec. 2(oo) of the Industrial Disputes Act, 1947 would not apply and consequently the termination would not amount to "retrenchment". Since the termination does not amount to "retrenchment" the question of complying with the provisions of Sec. 25F of the Industrial Disputes Act, 1947 does not arise and hence for not complying with the provisions of Sec. 25F the termination does not become illegal and unjustified. I, therefore hold that the termination of service of the workman does not amount to retrenchment and hence the question of complying with the provisions of Sec. 25F of the Industrial Disputes Act, 1947, did not arise. In the circumstances I answer the issue no. 1 in the negative.

12. Issue No. 2: The termination order has been challenged by the workman on two grounds, one being that there is no compliance of Sec. 25F of the Industrial Disputes Act, 1947 and the other being that the termination is with retrospective effect. While deciding the issue No. 1 it has been held by me that the termination does not amount to retrenchment and hence the question of complying with the provisions of Sec. 25F does not arise. The workman was entitled to only closure compensation as if his services were retrenched. This being the case there is no substance in the contention of the workman that the termination order is illegal and unjustified for not complying with the provisions of Sec. 25F of the Industrial Disputes Act, 1947. However, there is some force in the other contention raised by the workman being that termination of service cannot be with retrospective effect. The termination letter dated 14-2-97 Exb. W-2 mentions that the services of the workman are terminated with effect from 1-2-97. This means that the services of the workman are terminated with retrospective effect. The Calcutta High Court in the case of Satyendra Kumar Dutta v/s Administrator, District Board, reported in 1959 ILLJ 595 has held that termination of service of an employee with retrospective effect is illegal. Therefore in the present case on this count the termination of service of the workman with effect from 1-2-97 becomes illegal. I, therefore hold that the workman has succeeded in proving that the action of the employer in terminating his services w.e.f. 1-2-1997 is illegal and unjustified. I therefore answer the issue No. 2 in the affirmative.

13. Issue No. 7: This issue pertains to the relief to be granted to the workman. It has been held by me while deciding the issue No. 2 that the termination of the services of the workman is illegal and unjustified. In the case of Sayyad Anwar v/s Divisional Controller, MSRTC, Aurangabad and others, reported in 2000(2) Bom.L.C. 388 the Bombay High Court has held that it is now well settled that if an order of dismissal or termination or retrenchment is set aside as illegal, improper, the normal relief of reinstatement with full back wages and continuity of service must follow unless the employer

pleads and proves and brings on record cogent material to enable the Labour Court to depart from the aforesaid normal rule. Therefore the ordinary or the normal rule is that when the termination of service of a workman is held to be illegal and unjustified he is entitled to reinstatement in service with full back wages and continuity of service unless there are reasons which do not warrant reinstatement or full back wages. These reasons should be just and reasonable.

14. In the present case the workman had filed an application dated 27-10-98 at Exb. 4 for impleading M/s Janata Consumers Co-operative Society Ltd., Panaji, as a party to the proceedings. This application was made by the workman on the ground that the fair price shop No. 1 of Mandovi Co-operative Stores Ltd., has been allotted to the above said Society and as such the said Society had become the successor in interest. After hearing the parties, this Tribunal passed the order dated 5-11-99 dismissing the application. This Tribunal held that as per the order dated 30-1-97 the said Society was allowed to open a counter in the premises where the employer Mandovi Co-operative Stores Ltd., was running the fair price shop with effect from February, 1997 until regular arrangement was made to open a fair price shop in place of the closed one so as not to cause inconvenience to the card holders. This Tribunal held that the said Society was permitted only to open a counter in the premises where fair price Shop No. 1 was run. In these circumstances the application filed by the workman for impleading Janata Consumer Co-op. Society was dismissed. This order was not challenged by the workman. At least there is nothing on record to show that the above order was challenged by the workman. In the course of the evidence also nothing has been brought on record by the workman to show that employer Mandovi Co-operative Stores Ltd., has restarted its business or that it was succeeded by Janata Consumer Co-operative Society or by some other Co-op. Society. The order dated 22nd January, 1997 Exb.E-1 of the Asst. Registrar of Co-op. Societies, Central Zone, Panaji, mentions that no useful purpose will be served by allowing the continuation of the Society and therefore he is confirming the order of taking the Society into Liquidation and by the said order Shri S. S. Sukhtankar, the Jr. Auditor of Co-op. Societies, Central Zone, Panaji, is appointed as Liquidator. The letter dated 19-5-97 Exb. W-5 which is a reply of the Liquidator to the letter of the workman dated 4-4-97 Exb. W-4 mentions that the services of the Workman are terminated in pursuance to the closure of the operation of the employer society. The above facts establish that the business of the employer society was closed from the month of February 1997 and the services of the workman were terminated. This being the case the question of reinstating the workman in service or awarding back wages to him does not arise. The services of the workman were terminated on account of the closure of the business of the employer society and the society was under liquidation. In the

circumstances, in my view the workman will be entitled to only closure compensation effective from 14-2-97 being the date of communication of liquidation of the said society to the workman. Sec. 25FFF(1) of the Industrial Disputes Act provides for payment of compensation to the workman in case of closing down of undertaking. As per the said section in case of closure of an undertaking the workman is entitled to notice and compensation in accordance with the provisions of Sec. 25F of the Industrial Disputes Act, 1947 as if the workman has been retrenched. Sec. 25F provides for giving one month's notice in writing to the workman or in lieu of such notice, payment of wages for the period of notice and also payment of compensation which shall be equal of 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. The Supreme Court in the case of Indian Leaf Tobacco Development Company Ltd., v/s The Management of Indian Leaf Tobacco Development Company Ltd., Guntur, reported in AIR-1970 SC 860 has held that when the closure is genuine and real the workman who have been retrenched due to such closure are entitled to retrenchment compensation only and cannot claim any re-employment or reinstatement. In the present case the workman has admitted that he was given one month's wages in lieu of notice. I, therefore hold that the workman is entitled to only to the payment of compensation effective from 14-2-97 being the date of communication of liquidation of the said Co-op. Society to the workman which shall be equal of 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. I therefore answer the issue No. 3 accordingly.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the Liquidator of the Mandovi Co-operative Stores Ltd. Panaji, Goa, in terminating the services of Shri Pralhad Y. Nipanikar, Weighman, with effect from 1-2-97 is illegal and unjustified. The Liquidator of the Mandovi Co-operative Stores Ltd., Panaji-Goa, shall pay to Workman Shri Pralhad Y. Nipanekar, compensation effective from 14-2-97 being the date of communication of liquidation of the Co-op. Society to the workman which shall be equal of 15 days average pay for every completed year of continuous service or any part thereof in excess of six months, as provided under Sec. 25F of the Industrial Disputes Act, 1947.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 21-7-2003 in reference No. IT/86/98, is hereby published as required by section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 13th August, 2003.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

IT/86/98

Kum. Ratan G. Narvenkar,

Fontainhas, Mala,

Panaji-Goa.

— Workman/Party I

V/s

The Liquidator of the

Mandovi Co-op. Stores Limited,

Jr. Auditor, Co-op. Societies,

Central Zone,

Panaji-Goa.

— Employer/Party II

Workman/Party-I represented by Adv. Shri A. Nigalye.

Employer/Party II represented by Adv. Shri M. S. Khandeparkar.

Panaji, dated: 21-7-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 7th September, 1998 bearing No. IRM/CON/(36)/97/10632 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the Liquidator of the Mandovi Co-operative Stores Limited, Panaji-Goa, in terminating the services of Kum. Ratan G. Narvenkar, Clerk-cum-Cashier, with effect from 1-2-1997 is legal and justified?

If not, to what relief the workperson is entitled?"

2. On receipt of the reference a case was registered under No. IT/86/98 and registered A/D notice was issued to the parties. In pursuance to the said notice parties put in their appearance. The Workman/Party I (for short, "Workman") filed her statement of claim at Exb.3. The facts of the case in brief as pleaded by the workman are that she was employed as a Clerk-cum-Cashier with the Employer/Party II (for short, "Employer") i.e., Mandovi Co-operative Stores Limited, and her last drawn salary was Rs. 884/- p.m. That the said Society was dealing in the sale of essential commodities and other consumer goods and it is now under liquidation and the Jr. Auditor of Co-operative Societies, Central Zone, in the office of the Asst. Registrar of Co-operative Societies, Panaji, is appointed as the Liquidator. That by letter dated 14th February, 1997 the Liquidator of the said Society informed the workman that the Society is taken into liquidation as per the order of the Assistant Registrar of Co-operative Societies, Central Zone, Panaji, dated 18-12-96 and that the fair price shop No. 1 which was run by the said Society is now allotted to Janata Consumers Co-operative Society, Panaji. That in the said letter it was mentioned that the services of the workman are no more required and therefore her services stood terminated w.e.f. 1-2-97. That the workman was offered a sum of Rs. 884/- by cheque which was enclosed in the said letter and he was informed that the said amount was towards notice period. That by letter dated 4-4-97 the workman demanded reinstatement in service with full back wages and he mentioned in the said letter that the establishment of the employer i.e., the Society is not factually closed and that a substitute has been appointed in her place. That the Liquidator did not reply to the said letter and therefore the workman sought the intervention of the office of the Labour Commissioner. That the Asst. Labour Commissioner, Panaji, being the conciliation officer initiated conciliation proceedings but the same ended in failure. The workman contended that termination of her services by the employer is illegal and unjustified and her services have been terminated without reasonable cause and for no misconduct committed by him. The workman contended that she was not offered or paid retrenchment compensation at the time when her services were terminated or at any time thereafter thereby violating the mandatory provisions of Sec. 25F of the Industrial Disputes Act, 1947. The workman also contended that her services are terminated with retrospective effect which is not permissible. The workman therefore claimed that she is entitled to reinstatement in service with full back wages and continuity in service.

3. The employer filed written statement at Exb.8. By way of preliminary objections the employer stated that the Mandovi Co-operative Stores Ltd., is not an 'Industry' within the meaning of Sec. 2(j) of the Industrial Disputes Act and the workman is not a 'workman' as defined under

Sec.2(s) of the Industrial Disputes Act, 1947 because she was employed in managerial capacity as a cashier. The employer also stated that no demand was raised on the management by the workman and as such there is no industrial dispute as contemplated u/s 2(k) of the Industrial Disputes Act, 1947. The employer stated that the workman has not sought leave of the Registrar of Co-operative Societies as required under Sec. 107 of the Maharashtra Co-operative Societies Act, 1960 before initiating the present proceedings. The employer stated that on the above grounds the claim put up by the workman is liable to be dismissed. Without prejudice to the above contentions the employer admitted that the workman was employed with Mandovi Co-operative Stores Ltd., as a cashier and her last drawn wages were Rs. 884/- p.m. The employer stated that the Sr. Auditor of the Asst. Registrar of Co-op. Societies, Central Zone has already filed misfeasance case against the workman and other employees including the then Directors of the Society based on the audit report of the year 1991-92 and 92-93. The employer stated that only the space of the fair price shop is allotted to Janata Co-op. Society which is a separate legal entity for all purposes. The employer denied that by letter dated 4-4-97 addressed to the Liquidator the workman demanded reinstatement in service with full back wages and with continuity of service. The employer denied that termination of service of the workman is illegal and unjustified or that the services are terminated without reasonable cause and for no misconduct committed by him. The employer also denied that the workman was not offered or not paid retrenchment compensation at the time of termination of service or at any time thereafter or that the retrenchment has been affected without following the mandatory provisions of Sec. 25F of the Industrial Disputes Act, 1947. The employer denied that the services of the workman have been terminated with retrospective effect and that it is not permissible. The employer stated that the society is already under winding up process and the question of functioning of the same did not arise at all. The employer denied that the Janata Co-op. Society has become the successor in interest of society. The employer prayed that the claim of the workman be dismissed with costs. Subsequent to the filing of the written statement the employer amended para.9 of the written statement and by way of amendment the employer admitted that a letter dated 4-4-97 was addressed to the Liquidator by the workman but it was denied that the Liquidator failed to answer the said letter. The employer stated that the said letter was replied by letter dated 19-5-97.

4. On the pleadings of the parties following issues were framed at Exb.10.

1. Whether the Party I prove that the termination of her service by the Party II amounts to retrenchment and that Party II did not comply with the provisions of Sec. 25F of the Industrial Disputes Act, 1947 before terminating her services?
2. Whether the Party I proves that the action of the Party II in terminating her services w.e.f. 1-2-97 is illegal and unjustified?
3. Whether the Party II proves that the reference is liable to be rejected as the Party I did not obtain leave of the Registrar of Co-op. Societies prior to raising the dispute?
4. Whether the Party II proves that the Party I is not a "workman" and hence the reference is not maintainable?
5. Whether the Party II proves that there is no industrial dispute within the meaning of Sec.2(k) of the Industrial Disputes Act, 1947 and hence the reference is not maintainable?
6. Whether the Party II proves that Mandovi Co-operative Society is not an "industry" and hence the reference is not maintainable?
7. Whether the Party I is entitled to any relief?
8. What Award?

5. My findings on the issues are as follows:

- Issue No. 1: In the negative.
- Issue No. 2: In the affirmative.
- Issue No. 3: In the negative.
- Issue No. 4: In the negative.
- Issue No. 5: In the negative.
- Issue No. 6: In the negative.
- Issue No. 7: As per para. 17 below.
- Issue No. 8: As per order below.

REASONS

Before deciding the issue No. 1, I propose to decide the issue Nos. 3, 4, 5 and 6 first because the said issues are relating to the maintainability of the reference.

6. **Issue No. 3:** The employer has challenged; the reference on the ground that leave of the Registrar of Co-op. Societies was not obtained before raising the dispute. The contention of the employer is that the reference is therefore not maintainable and hence is liable to be rejected. Adv. Shri Khandeparkar, the learned Advocate for the employer has submitted that the leave

of the Registrar of Co-op. Societies Act, 1960 is required to be obtained under Sec. 107 of the said Act 1960, as made applicable to the State of Goa. He has submitted that the workman in her cross examination has admitted that she did not obtain any permission from the Registrar of Co-operative Societies before raising the dispute. I do not agree with these submissions of Adv. Shri Khandeparkar. Sec. 107 of the Maharashtra Co-op. Societies Act, 1960 bars jurisdiction of the Civil Court to deal with the matter connected with the winding up or dissolution of the Society under the Act and when a winding up order is made no civil suit or other legal proceedings lie before the Civil Court without the leave of the Registrar of Co-op. Societies. The Industrial Disputes Act, 1947 is a special Act. The Industrial Tribunal or the Labour Court are not civil Courts. Under Sec. 10 of the Industrial Disputes Act, 1947 it is the Government who makes the reference of the dispute to the Tribunal for adjudication. Hence the question of seeking leave of the Registrar under Sec. 107 of the Maharashtra Co-op. Societies Act, does not arise. Even otherwise the leave is required to be taken when the matter is connected with the winding up or dissolution of the Society. In the present case the dispute is concerned with the termination of the services of the workman and it is not concerning the winding up or the dissolution of the Society. In the circumstances the provisions of Sec. 107 of the Maharashtra Co-op. Societies Act, 1960 are not attracted. I therefore hold that the employer has failed to prove that the reference is liable to be rejected for not obtaining the leave of the Registrar of Co-op. Societies prior to raising the dispute. I therefore answer the issue No. 3 in the negative.

7. **Issue No. 6:** Before deciding the issue whether the workman Kum. Ratan Narvenkar is a "workman" as defined under Sec. 2(s) of the Industrial Disputes Act, 1947 or not, it is necessary to decide whether the employer Mandovi Co-operative Stores Ltd., is an industry or not, as defined under Sec. 2(J) of the Industrial Disputes Act, 1947. This is because for being a workman the person must have been employed in an industry. The contention was raised by the employer in the written statement that the employer society is not an industry as defined under the Act. Therefore the burden was on the employer to prove the same. However, no evidence whatsoever has been brought on record by the employer to show that it is not an "industry" as defined under the Act. Adv. Shri Khandeparkar, the learned Advocate for the employer submitted in the course of his arguments that he is not pressing for the issue whether the employer society is an "industry" or not. In the circumstances, I hold that the employer has failed to prove that it is not an "industry" or not. In the circumstances I hold that the employer has failed to prove that it is not an "industry" as defined under Sec. 2(J) of the Industrial Disputes Act, 1947. I therefore answer the issue No. 6 in the negative.

8. **Issue No. 4:** In the written statement the employer took the defence that the workman Kum. Ratan Narvenkar is not a "workman" as defined under Sec. 2(s) of the Industrial Disputes Act, 1947. The contention of the employer is that Kum. Ratan Narvenkar was employed as a cashier and she was working in managerial capacity.

Sec. 2(s) of the Industrial Disputes Act, 1947 defines "Workman" as follows:

"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, where the terms of employment be express or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, include any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or
- (ii) who is employed in the police service or as an officer or other employee of a prison, or
- (iii) who is employed mainly in a managerial or administrative capacity, or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

9. As per the definition of "workman" which is reproduced hereinabove, a person who is employed mainly in a managerial or administrative capacity falls outside the definition of workman. It is the contention of the employer that Kum. Ratan Narvenkar was employed as a cashier and she was discharging managerial functions. The burden was on the employer to prove this fact. The Bombay High Court in the case of S. A. Sarang v/s W. G. Forge & Allied Industries Ltd., Thane and others reported in 1995 I CLR 837 has held that it is a settled law that it is the actual work done by the employee which is determinative of whether he falls within the scope of the definition of "workman" under Sec. 2(s) of the Act and not his designation. The Supreme Court in the case of Anand Bazar Patrika v/s Its Workmen, reported in 1969 II LLJ 670 and Burmah Shell Oil Storage and Distribution Co. of India Ltd., v/s The Burmah Shell Management Staff Association reported in AIR 1971 SC 922 has held that to decide whether a person is a workman or not what

is required to be seen is the main work carried out by that person and not the incidental work carried out by him. Therefore to find out whether the workman fell within the exceptions laid down in Sec. 2(s) of the Industrial Disputes Act, 1947, what is required to be seen is the principal or the main work or duties performed by him.

10. In the present case the workman Kum. Ratan Narvenkar has examined herself whereas the employer has examined the Liquidator Shri Sukhtankar. Kum. Narvenkar has stated in her deposition that she was working as a Cashier cum clerk with the employer since the year 1983. She produced the appointment letter dated 2nd March, 1990 Exb. W-1. In her cross examination she stated that she was collecting cash at the fair price shop and she was disbursing salary to the weighman as per the instructions from the Chairman. She stated that at the fair price shop only she and the weighman Shri Pralhad Nipani were working and sometimes another person used to work as a helper. She stated that she used to prepare bills, make payments in respect of the goods purchased by the employer. In the written statement the employer stated that Kum. Ratan Narvenkar was employed as a Cashier, and not clerk cum cashier. However, the appointment letter dated 22nd March, 1990 Exb. W-1 which has been produced by Kum. Narvenkar which is not disputed by the employer proves that she was employed as a clerk-cum-cashier. The evidence which has come on record shows that the duties which were being performed by Kum. Narvenkar were that of collecting cash, disbursing salary, preparing bills and make payments in respect of the goods purchased by the employer. The employer has taken the defence that Kum. Narvenkar is not a workman because she was working in managerial capacity. However, neither in the evidence of the workman nor in its evidence, the employer has brought anything on record to show that Kum. Narvenkar was appointed in managerial capacity or that she was discharging duties of managerial nature. What are managerial duties have not been indicated in the Industrial Disputes Act, 1947. The Supreme Court in the case of Prem Sagar v/s S. N. Oil company reported in AIR 1965 SC 111 has held that the tests which are required to be applied for determining whether a person was exercising managerial duties are, whether the person, had a power to operate on the bank account or could he make payments to third parties and enter into agreements with them on behalf of the employer, was he entitled to represent the employer to the world at large in regard to the dealings of the employer with strangers; did he have authority to supervise the work of the clerks employed in the establishments; did he have control and charge of the correspondence; could he make commitments on behalf of the employer; could he grant leave to the members of the staff and hold disciplinary

proceeding against them; has he powers to appoint members of the staff or punish them and similar other tests. The duties performed by the workman Kum. Narvenkar have been mentioned by me earlier. None of the above tests laid down by the Supreme Court apply to her. The duties performed by her were of purely clerical nature. I therefore hold that the employer has failed to prove that Kum. Ratan Narvenkar was doing the work of managerial nature and that therefore she is not a "workman" as defined under Sec. 2(s) of the Industrial Disputes Act, 1947. I therefore answer the issue No. 4 in the negative.

11. **Issue No. 5:** It is the contention of the employer that there is no industrial dispute as contemplated under Sec. 2(k) of the Industrial Disputes Act, 1947 because no demand was made on the management by the workman prior to approaching the conciliation machinery. Adv. Shri Khandeparkar, the learned Advocate for the employer, has relied upon the judgment of the Supreme Court in the case of *Sindhu Resettlement Corporation Ltd., v/s Industrial Tribunal of Gujrat and others*, reported in AIR 1968 SC 529 and that of the Delhi High Court in the case of *Fedders Lloyd Corporation (Pvt.) Ltd.*, reported in AIR 1970 Delhi 60 in support of his contention. It is no doubt true that what the Government can refer to the Industrial Tribunal is an industrial dispute and no other dispute. Sec 2(K) of the Industrial Disputes Act, 1947 defines industrial dispute as a dispute or difference between employers and employers or between employers and workmen or between workmen and workmen which is connected with the employment nor non-employment or the terms of employment or with conditions of labour, of any person. Dispute or difference arises when there is demand from one person and rejection of the same from the other. The judgments above referred to and relied upon by the employer lay down the proposition that unless the workman makes a demand on the management or the employer and the same demand is rejected, the industrial dispute does not arise. In the present case it is the contention of the employer that no demand was made by the workman before approaching the conciliation officer. There is no substance in this contention of the employer. The Mandovi Co-operative Stores Ltd., was taken into liquidation by order of the Asst. Registrar of Co-op. Societies, Central Zone, Panaji, by order dated 22nd January, 1997 Exb.E.1. By the same order Shri S. S. Sukhtankar, Jr. Auditor, Co-op. Societies, Central Zone, Panaji was appointed as Liquidator of the Mandovi Co-operative Stores Ltd.,. The above fact was informed to the workman by the Liquidator vide letter dated 14th February, 1997 Exb. W-2. By this letter the workman was informed that her services are no more required and hence her services stand terminated with effect from 1-2-97. It is on receipt of this letter from the Liquidator that the workman raised the dispute before the Liquidator vide letter dated 4-4-97 Exb. W-3 regarding

termination of her service and demanded that she should be reinstated in service with full back wages. The Liquidator replied to the said letter of the workman by reply dated 19-5-97 Exb. W-5. In this letter the workman was informed that her services were terminated in pursuance to the closure of the operation of Mandovi Co-operative Stores Ltd., and she was further informed that his legitimate dues will be settled after the finalisation of the accounts and audit of the said society. This means that the employer had rejected the demand of the workman to reinstate him in service with full back wages. Therefore before raising the dispute before the conciliation officer, the workman had made the demand before the employer for reinstating her in service with full back wages and this demand was rejected by the employer. Therefore the dispute referred by the Government for adjudication is an industrial dispute within the meaning of Sec. 2(K) of the Industrial Disputes Act, 1947. I therefore hold that the employer has failed to prove that there is no industrial dispute within the meaning of Sec. 2(k) of the Industrial Disputes Act, 1947. I, therefore answer the issue no. 5 in the negative.

12. **Issue No. 1:** The workman has contended that termination of her service by the employer amounts to "retrenchment" and that the employer did not comply with the provisions of Sec. 25F of the Industrial Disputes Act, 1947. Adv. Shri Nigalye, the learned Advocate for the workman, submitted that what was offered to the workman at the time of termination of her service was the notice pay. He submitted that the workman in para. 4 of her claim statement has stated that she was offered a sum of Rs. 884/- by cheque which was enclosed in the letter of termination and that she was informed that the said amount was towards notice period that is, in lieu of notice. He submitted that above contentions of the workman are admitted by the employer in para. 8 of the written statement. He submitted that the workman has stated in para. 7 of her claim statement that the retrenchment compensation was not paid to her and the employer in para. 11 of the written statement denied that retrenchment compensation was not paid. He submitted that however in the evidence of the employer it is admitted that the retrenchment compensation was not paid.

13. Firstly it is to be seen whether the termination of service of the workman amounts to retrenchment as contended on behalf of the workman. Sec. 2(oo) of the Industrial Disputes Act, 1947 defines retrenchment as follows:

- (oo) "**Retrenchment**" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include;

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the service of a workman on the ground of continued ill-health"

14. In the present case the services of the workman were terminated vide letter dated 14th February, 1997 Exb. W-2. In the said letter it is stated that the services of the workman are no more required because Liquidator of the Mandovi Co-operative Stores Ltd., has been appointed and the premises where the fair price shop was run by the said Society, has been allotted to Janata Consumers Co-op. Society Ltd., Panaji and hence her services stand terminated from 1-2-97. The letter dated 19-5-97 Exb. W-5 of the Liquidator also mentions that the services of the workman were terminated in pursuance to the closure of the operation of the said Society. The workman has not disputed that the Society is under liquidation. The above evidence therefore shows that the services of the workman were terminated on account of the closure of the business of the employer Society and the said society having gone under liquidation. Therefore when the business itself is closed and the society is under liquidation, the provisions of Sec. 2(oo) of the Industrial Disputes Act, 1947 would not apply and consequently the termination would not amount to "retrenchment". Since the termination does not amount to "retrenchment" the question of complying with the provisions of Sec. 25F of the Industrial Disputes Act, 1947 does not arise and hence for not complying with the provisions of Sec. 25F the termination does not become illegal and unjustified. I, therefore hold that the termination of service of the workman does not amount to retrenchment and hence the question of complying with the provisions of Sec. 25F of the Industrial Disputes Act, 1947, did not arise. In the circumstances I answer the issue No. 1 in the negative.

15. **Issue No. 2:** The termination order has been challenged by the workman on two grounds, one being that there is no compliance of Sec. 25F of the Industrial Disputes Act, 1947 and the other being that the termination is with retrospective effect. While deciding the issue No. 1 it has been held by me that the termination does not amount to retrenchment and hence

the question of complying with the provisions of Sec. 25F does not arise. The workman was entitled to only closure compensation as if her services were retrenched. This being the case there is no substance in the contention of the workman that the termination order is illegal and unjustified for not complying with the provisions of Sec. 25F of the Industrial Disputes Act, 1947. However, there is some force in the other contention raised by the workman being that termination of service cannot be with retrospective effect. The termination letter dated 14-2-97 Exb. W-2 mentions that the services of the workman are terminated with effect from 1-2-97. This means that the services of the workman are terminated with retrospective effect. The Calcutta High Court in the case of Satyendra Kumar Dutta v/s Administrator, District Board, reported in 1959 ILLJ 595 has held that termination of service of an employee with retrospective effect is illegal. Therefore in the present case on this count the termination of service of the workman with effect from 1-2-97 becomes illegal. I, therefore hold that the workman has succeeded in proving that the action of the employer in terminating her services w.e.f 1-2-1997 is illegal and unjustified. I, therefore answer the issue No. 2 in the affirmative.

16. **Issue No. 7:** This issue pertains to the relief to be granted to the workman. It has been held by me while deciding the issue No. 2 that the termination of the services of the workman is illegal and unjustified. In the case of Sayyad Anwar v/s Divisional Controller, MSRTC, Aurangabad and others, reported in 2000(2) Bom.L.C. 388 the Bombay High Court has held that it is now well settled that if an order of dismissal or termination or retrenchment is set aside as illegal, improper, the normal relief of reinstatement with full back wages and continuity of service must follow unless the employer pleads and proves and brings on record cogent material to enable the Labour Court to depart from the aforesaid normal rule. Therefore the ordinary or the normal rule is that when the termination of service of a workman is held to be illegal and unjustified he is entitled to reinstatement in service with full back wages and continuity of service unless there are reasons which do not warrant reinstatement or full back wages. These reasons should be just and reasonable.

17. In the present case the workman had filed an application dated 13-1-99 at Exb. 6 for impleading M/s Janata Consumers Co-operative Society Ltd., Panaji, as a party to the proceedings. This application was made by the workman on the ground that the fair price shop No. 1 of Mandovi Co-operative Stores Ltd., has been allotted to the above said Society and as such the said Society had become the successor in interest. After hearing the parties, this Tribunal passed the order dated 5-11-99 dismissing the application. This Tribunal held that as per the order dated 30-1-97 the said Society was

allowed to open a counter in the premises where the employer Mandovi Co-operative Stores Ltd., was running the fair price shop, with effect from February, 1997 until regular arrangement was made to open a fair price shop in place of the closed one so as not to cause inconvenience to the card holders. This Tribunal held that the said Society was permitted only to open a counter in the premises where fair price Shop No. 1 was run. In these circumstances the application filed by the workman for impleading Janata Consumer Co-op. Society was dismissed. This order was not challenged by the workman. At least there is nothing on record to show that the above order was challenged by the workman. In the course of the evidence also nothing has been brought on record by the workman to show that employer Mandovi Co-operative Stores Ltd., has restarted its business or that it was succeeded by Janata Consumer Co-operative Society or by some other Co-op. Society. The order dated 22nd January, 1997 Exb.E-1 of the Asst. Registrar of Co-op. Societies, Central Zone, Panaji, mentions that no useful purpose will be served by allowing the continuation of the Society and therefore he is confirming the order of taking the Society into Liquidation and by the said order Shri S. S. Sukhtankar, the Jr. Auditor of Co-op. Societies, Central Zone, Panaji, is appointed as Liquidator. The letter dated 19-5-97 Exb. W-5 which is a reply of the Liquidator to the letter of the workman dated 4-4-97 Exb. W-4 mentions that the services of the Workman are terminated in pursuance to the closure of the operation of the employer society. The above facts establish that the business of the employer society was closed from the month of February, 1997 and the services of the workman were terminated. This being the case the question of reinstating the workman in service or awarding back wages to him does not arise. The services of the workman were terminated on account of the closure of the business of the employer society and the society was under liquidation. In the circumstances, in my view the workman will be entitled to only closure compensation effective from 14-2-97 being the date of communication of liquidation of the said society to the workman. Sec. 25FFF(1) of the Industrial Disputes Act provides for payment of compensation to the workman in case of closing down of undertaking. As per the said section in case of closure of an undertaking the workman is entitled to notice and

compensation in accordance with the provisions of Sec. 25F of the Industrial Disputes Act, 1947 as if the workman has been retrenched. Sec. 25F provides for giving one month's notice in writing to the workman or in lieu of such notice, payment of wages for the period of notice and also payment of compensation which shall be equal of 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. The Supreme Court in the case of Indian Leaf Tobacco Development Company Ltd., v/s The Management of Indian Leaf Tobacco Development Company Ltd., Guntur, reported in AIR 1970 SC 860 has held that when the closure is genuine and real the workman who have been retrenched due to such closure are entitled to retrenchment compensation only and cannot claim any re-employment or reinstatement. In the present case the workman has admitted that she was given one month's wages in lieu of notice. I, therefore hold that the workman is entitled to only to the payment of compensation effective from 14-2-97 being the date of communication of liquidation of the said Co-op. Society to the workman which shall be equal of 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. I, therefore answer the issue No. 3 accordingly.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the Liquidator of the Mandovi Co-operative Stores Ltd. Panaji, Goa, in terminating the services of Kum. Ratan G. Narvenkar, Clerk-cum-Cashier, with effect from 1-2-97 is illegal and unjustified. The Liquidator of the Mandovi Co-operative Stores Ltd., Panaji-Goa, shall pay to Workman Kum. Ratan G. Narvenkar, compensation effective from 14-2-97 being the date of communication of liquidation of the Co-op. Society to the workman which shall be equal of 15 days average pay for every completed year of continuous service or any part thereof in excess of six months, as provided under Sec. 25F of the Industrial Disputes Act, 1947.

No order as to cost. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.